

REMARKS

The above-identified patent application has been amended and Applicant respectfully requests the Examiner to reconsider and again examine the claims as amended in accordance with the provisions of 37 C.F.R. §1.116.

Claims 1-43 are pending in the application. Claims 1-22 and 37-43 are allowed. Claims 23-36 are rejected. Claims 23-36 are amended herein.

The Rejections under 35 U.S.C. §101

The Examiner rejects Claims 23-36 under 35 U.S.C. §101 as containing non-statutory subject matter. The Examiner uses “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” published in the Official Gazette on November 22, 2006 (hereafter, the Official Gazette) as a basis for his rejection of Claims 23-36. The Official Gazette describes signals to be non-statutory subject matter. The Examiner asserts that the disclosure suggests that claimed “the computer program medium includes signals.” Applicant respectfully disagrees.

Applicant again recites a passage from the specification appearing at page 28 of the substitute specification: “[t]he computer readable medium can also include a communications link, either optical, wired, or wireless, having program code segments carried thereon as digital or analog signals.” Contrary to the Examiner’s assertion, Applicant submits that the definition provided by the Applicant describes a physical link, which is either optical, wired, or wireless, and is, therefore, a composition of matter. As recited, the computer readable medium is clearly indicative of a physical medium, and not of the signal carried on the medium. A “medium” is not a “signal.” Any electronic physical medium can carry a signal. It appears that the Examiner is excluding all physical media, e.g., wires, fiber optic structure, etc. from patentable subject matter.

Nevertheless, in order to move the case forward, Applicant has amended Claim 23 herein in order to specify “[a] computer program storage medium having computer readable code thereon, the code interpretable by a computer platform for storing commands.” Claims 24-36 are similarly amended accordingly.

This above preamble is different than a preamble suggested by the Examiner in the Office Action. The Examiner suggests “[a] computer program storage medium having computer readable code, when executed by a computer, performs the storage of dynamic snapshots of a computer system.” Applicant believes that the word “executed” used by the Examiner is not appropriate, and might limit the claim to include only executable code, i.e., compiled code. As the Examiner is aware, computer code exists in a variety of forms, some of which are not first compiled.

Applicant believes that the amended preamble of Claim 23 meets the intent of the Official Gazette, in clearly precluding signals from the claim.

In view of the above, Applicant submits that the rejection of Claims 23-36 under 35 U.S.C. §101 should be removed.

In view of the above Amendment and Remarks, Applicant submits that the claims and the entire case are in condition for allowance and should be sent to issue and such action is respectfully requested.

It is submitted that this amendment places the application in condition for allowance or in better form for consideration on appeal, and thus, entry of this amendment is respectfully requested under the provisions of 37 C.F.R. §1.116.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845, including but not limited to, any charges for extensions of time under 37 C.F.R. §1.136.

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Respectfully submitted,

DALY, CROWLEY, MOFFORD & DURKEE, LLP

By: Kermit Robinson

Kermit Robinson

Reg. No. 48,734

Attorney for Applicant(s)

354A Turnpike Street - Suite 301A

Canton, MA 02021-2714

Tel.: (781) 401-9988, Ext. 24

Fax: (781) 401-9966

kr@dc-m.com